

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	Jason G. Lang et al.	Examiner:	Kurt C. Rowan
Serial No.:	10/714,751	Group Art Unit:	3643
Confirmation No.:	3348	Docket No.:	117P1846US01
Filed:	November 17, 2003		
Title:	RODENT TRAP		

APPELLANTS' REPLY BRIEF

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Appellants' Reply Brief is being filed in response to the Examiner's Answer mailed August 21, 2007.

Obviousness over Celestine in view of Souza

In summary, neither Celestine nor Souza disclose an area of confinement as claimed. Celestine's housing does not form an area of confinement. Rather, the area of confinement is formed by the removable insert receptacle 40. Without the removable insert receptacle 40, the rodent can escape from the housing through insertion opening 18. Souza's housing also does not form an area of confinement. Because either the entry openings 26 and 28 or the exit opening 30 are/is always open, the rodent could escape through the openings. An area of confinement is not

formed until the two units (the capture unit and the holding unit) are separated and the entry door means 80 closes to close access to the holding unit. More detail regarding these references follows.

The Examiner's Answer states that Celestine has a trap assembly 30 providing access to a cavity such as the interior of the housing above floor 16 and below door 30 and bottom wall 16 in extension 17. Thus, the cavity includes the interior 15 of the housing above the floor 16 and the lower portion of the housing in the extension 17 proximate the insertion opening 18. Further, it is stated that Celestine shows a removable insert receptacle 40 configured and arranged to contain a rodent within the cavity. The lower portion of the cavity, which holds the removable insert receptacle 40, prevents the rodent from leaving once the rodent drops through the trap assembly 30. In the Response to Argument section, it is stated that Celestine is not designed to be used without the removable insert receptacle 40.

Appellants respectively submit that during use of Celestine's rodent trap, a wall portion, a floor portion, a front portion, a top portion, sides, and a trap assembly do not form an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity, as recited in claim 1. More specifically, with regard to the upper portion of the cavity proximate interior 15, the front wall 14 is pivoted downward about hinge 19 to serve as a ramp for rodents to easily walk into the interior 15 of the housing. Thus, because there is an opening proximate the front wall 14, an area of confinement is not formed to prevent escape of the rodent from the upper portion of the cavity proximate interior 15. With regard to the lower portion of the cavity

proximate opening 18, the opening provides access to the lower portion of the cavity. Thus, an area of confinement is not formed to prevent escape of the rodent from the lower portion of the cavity proximate opening 18. Therefore, Celestine's housing does not form an area of confinement.

Further, the lower portion of the cavity proximate opening 18, which holds the removable insert receptacle 40, only prevents the rodent from leaving once the rodent has dropped through the trap assembly 30 when the removable insert receptacle 40 is positioned within the extension 17. Without the removable insert receptacle 40, the rodent could leave through the opening 18. Thus, Celestine does not disclose a wall portion, a floor portion, a front portion, a top portion, sides, and a trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity, as recited in claim 1.

The Examiner's Answer states that Souza shows a rodent trap with two units (a capture unit and a holding unit) adjacent to each other rather than the removable insert receptacle (the holding unit) being located within the cavity (of the capture unit). Further, it is stated in the Response to Arguments section that once the doors 32 and 34 are closed, the animal is trapped. It should be pointed out that when the doors 32 and 34 are closed, the exit opening is open, but the rodents are still trapped since going through the exit opening results in the rodent being in the holding unit.

Appellants respectfully submit that Souza also does not disclose an area of confinement because either the entry openings 26 and 28 or the exit opening 30 are/is always open. Thus, if

the rodent is contained within the holding unit and the exit door 36 proximate exit opening 30 opens, the rodent can enter the capture unit and, when the entry doors 32 and 34 proximate entry openings 26 and 28 open, the rodent can exit the capture unit through the entry openings 26 and 28 thus allowing the rodent to escape. It is not until the units are separated and the entry door means 80 closes that an area of confinement is formed. Souza discloses in column 3, lines 60-68 that when the units are assembled, the holding unit entry door means 80 is open to provide access between the capture unit and the holding unit, and when the units are separated, the door means closes automatically thereby completely confining captured animals within the holding unit. Thus, until then, a rodent can move between the units through exit opening 30 and even out of the capture unit when the entry doors 32 and 34 proximate entry openings 26 and 28 are open.

The Examiner's Answer states that, with regard to claim 1, it would have been obvious to provide the trap of Celestine with a door movement operation as shown by Souza so that when the door 30 to the removable insert 40 opens, the door 18 to the trap assembly closes for the purpose of preventing escape of the rodent by jumping back through the open door 18. Then, after the trap door 30 of Celestine closes, the door 18 can reopen to start the cycle over.

Appellants respectfully submit that there is no door 18 of Celestine. Rather, there is an opening 18 in the lower portion of the housing to insert and remove the removable insert 40 from the extension 17. If the portion of the extension 17 had a door rather than the opening 18, and the door opened as suggested in the Examiner's Answer, there would not be an area of confinement because when the door 30 is open, the rodent could exit through the door 30 and run

down the ramp formed by the front wall 14. Further, when the door in the extension 17 is open, the rodent could exit through the door. Thus, the rodent would not be prevented from escaping and there would not be an area of confinement.

It is also stated in the Examiner's Answer that the claim states that the cavity is configured and arranged to contain a rodent, which does not preclude the rodent from leaving. The claim just requires that the cavity can hold a rodent. Appellants respectfully submit that the rodent is precluded from leaving because the wall portion, the floor portion, the front portion, the top portion, the sides, and the trap assembly form an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity, as recited in claim 1.

The Examiner's Answer also states that the argument that Celestine requires a rodent box to contain and prevent escape of the rodent is a functional limitation which would be more properly presented in a method of trapping claim. Celestine does not contemplate using the trap without the rodent box. Celestine shows the interior 15 exposed by the swinging front wall 14 and the insertion opening 18, which do not allow for the rodent to be contained therein. However, the rodent is contained in the box 40.

Appellants respectfully submit that the structural differences and the relationship between them that perform this function are recited in the claims. Claim 1 recites "the wall portion, the floor portion, the front portion, the top portion, the sides, and the trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity".

Thus, regardless if the removable insert receptacle is housed within the cavity, the rodent is prevented from escaping.

Further, claim 8 recites “the base, the cover, and the trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity”. Claim 12 recites “the housing and the trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity”. Claim 18 recites “the base, the trap assembly, and the housing forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity”. Claim 23 recites “the cover, the base, and the trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity”. Claim 29 recites “the wall portion, the floor portion, the front portion, the top, the platform, the climbing assisting members, and the trap assembly forming an area of confinement in which the rodent is trapped thereby preventing escape of the rodent from the cavity”. Claim 37 recites “said wall portion, said floor portion, said elevated platform, said cover, said climbing assisting members, and said trap assembly forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from the cavity”. Claim 43 recites “said housing, said elevated trap assembly, and said climbing assisting members forming an area of confinement in which the rodent is trapped to prevent escape of the rodent from said cavity”. Thus, like claim 1, these claims recite an area of confinement regardless if a removable insert receptacle is housed within the cavity.

The Examiner's Answer also states that, regarding claims 4, 16, 29, and 37, Celestine does not show the climbing assisting members between the wall portion and the front portion and between the floor portion and the top portion and between the sides and being enclosed therebetween. It would have been obvious to employ a climbing assisting member or members anywhere in the interior of the trap where it is deemed desirable. Appellants respectfully submit that Celestine neither teaches nor suggests an interior ramp. Rather, the ramp extends outward from the housing and is an exterior ramp. The front wall 14 pivots about the hinge 19 to move from a closed position when the trap is not in use to an open position when the trap is in use. Thus, there is no teaching or suggestion to have an interior ramp. Therefore, the climbing assisting members as recited in claims 4, 16, 29, and 37 are not obvious in view of Celestine.

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Conclusion

It is respectfully submitted that the claimed subject matter is not obvious in view of these references. In view of the aforesaid reasons, and those advanced during prosecution to date, the Appellants request that the Examiner's rejections be reversed.

Respectfully submitted,

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Date: 17 October 2007

By:



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